FILE COPY.

DEC 27 1902

JAMES H. McKENNEY,
Clerk.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1902.

THE ALASKAN LICENSE CASES.

A. W. CORBUS, *Appellant*, v. THE ALASKA TREADWELL GOLD MINING COMPANY.	No. 10.
CHARLES STEWART, *Appellant*, v. THE WASHINGTON AND ALASKA STEAMSHIP COMPANY ET AL.	No. 13.
THE PACIFIC STEAM WHALING COMPANY, *Appellant*, v. THE UNITED STATES.	No. 26.
THE PACIFIC COAST STEAMSHIP COMPANY, *Appellant*, v. THE UNITED STATES.	No. 29, 30, and 31.

Appeals from the United States District Court for the District of Alaska.

POINTS MADE IN ARGUMENT BY COUNSEL FOR APPELLANTS WITH AUTHORITIES AND APPENDIX.

S. M. STOCKSLAGER,
GEO. C. HEARD,
Attorneys for Appellants.

JOHN R. WINN,
JOHN G. REID,
Of Counsel.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1902.

THE ALASKAN LICENSE CASES.

A. W. CORBUS, *Appellant*, v. THE ALASKA TREADWELL GOLD MINING COMPANY.	No. 10.
CHARLES STEWART, *Appellant*, v. THE WASHINGTON AND ALASKA STEAMSHIP COMPANY ET AL.	No. 13.
THE PACIFIC STEAM WHALING COMPANY, *Appellant*, v. THE UNITED STATES.	No. 26.
THE PACIFIC COAST STEAMSHIP COMPANY, *Appellant*, v. THE UNITED STATES.	No. 29, 30, and 31.

Appeals from the United States District Court for the District of Alaska.

POINTS MADE IN ARGUMENT BY COUNSEL FOR APPELLANTS WITH AUTHORITIES AND APPENDIX.

THE PROCEDURE.

Counsel for the United States begins his brief, filed subsequent to the oral argument, as follows:

> "The theory of the other side is that these license taxes collected in Alaska are general taxes; that they are levied for the benefit of the United States, and since they are not uniform throughout the United States they are unconstitutional. If they are general taxes, I submit that a proper method of procedure has not been used to test their constitutionality."

Our theory could be better stated perhaps by saying that they are *specific taxes*, levied and collected by a special statute; but that they are *general* as contradistinguished from *local taxes*, levied by Congress, as the legislature of Alaska, in that they are required to be paid into the *general* Treasury of the United States, to be used for *general* purposes, and not *locally for Alaska*.

The Government in seeking to avoid one dilemma falls into another equally great.

For the purpose of avoiding the uniformity clause of the Constitution, it is insisted—

1st. That these license fees are not taxes, but regulations under the police power, and as such are authorized by article 4, section 3, of the Constitution, and—

2d. If taxes, then they are *local* taxes, levied by Congress, as the legislature of Alaska, and as such not subject to the uniformity clause. But for the purposes of the procedure the effect of their argument is that they are general taxes, and we have for that reason mistaken our remedy.

This piece of legislation is unique, in that it levies these specific taxes and provides for their collection in a mode different from any other which we have been able to find. They are neither levied nor collected through the machinery of the Treasury Department, but wholly through the machinery of the courts. No appeal is provided for as in the case of internal revenue and customs duties, but it is made a criminal offense to carry on the classes of business enumerated without paying the taxes in advance and procuring the license.

It is clear, therefore, that the ordinary rules governing the resistance to the payment of illegal taxes are inapplicable.

In Cheatham *vs.* Norvekl, 92 U. S. (2 Otto.), 85, Mr. Justice Miller, speaking for the Court, said:

> "All governments, in all times, have found it necessary to adopt stringent measures for the collection of taxes, and to be rigid in the enforcement of them
>
> These measures are not judicial; nor does the government resort, except in extraordinary cases, to the courts for that purpose. The

revenue measures of every civilized government constitute a system which provides for its enforcement by officers commissioned for that purpose. In this country, this system for each State, or for the Federal Government, provides safeguards of its own against mistake, injustice or oppression, in the administration of its revenue laws. Such appeals are allowed to specified tribunals as the law-makers deem expedient. Such remedies also, for recovering back taxes illegally exacted, as may seem wise, are provided. In these respects, the United States has, as was said by this court in Nichols *vs.* U. S., 7 Wall., 122 (74 U. S. 125), enacted a system of corrective justice, as well as a system of taxation, in both its customs and internal revenue branches.. That system is intended to be complete. In the customs department it permits appeals from appraisers to other appraisers, and in proper cases to the Secretary of the Treasury; and, if disatisfied with this highest decision of the Executive Department of the Government, the law permits the party, on paying the money required, with a protest embodying the grounds of his objection to the tax, to sue the Government through its collector, and test in the courts the validity of the tax.

So, also, in the internal revenue department, the statute which we have copied allows appeals from the assessor to the Commissioner of Internal Revenue; and if dissatisfied with his decision, on paying the tax the party can

sue the collector; and if the money was wrongfully exacted the courts will give him relief by a judgment, which the United States pledges herself to pay."

None of these remedies are applicable in these cases. The applicant must pay in advance, or his business is illegal and he is subjected to heavy penalties and imprisonment, and each day he does business is declared by the statute to be a separate and distinct offense. No provision is made for appeal, or the bringing of suit, as the money is required by law to be *covered into the Treasury*, from whence it can be drawn only by virtue of an appropriation by Congress.

The Pollock Case as Authority.

The opening paragraph of the decision by Mr. Chief Justice Fuller, in the case of Pollock *vs.* Farmer's Loan and Trust Co., (157 U. S. 429), settles the principle that a court of equity will entertain jurisdiction to prevent any threatened breach of trust in the misapplication or diversion of the funds of a corporation by illegal payments out of its capital or profits.

That decision also settles the doctrine that the collection of a federal tax may be enjoined by the United States courts.

It is true, as suggested by counsel for the Government that in the Pollock case the United States did not insist upon the jurisdictional question, and so far as counsel could do so, the question was waived; but it is likewise true that the question was raised by the court, considered and passed upon, of which fact counsel is abundantly cognizant, as he has copied in the appendix to his brief, nearly three pages from the dissenting opinion of two of the Justices filed in that case upon this very point (pp. 54, 55, 56, and 57).

The question is, therefore, just as fully settled as it is possible for a decision of the Court, upon the precise point, to settle it.

But it is contended that these cases must be distinguished from the Pollock case, for the reason that in that case the company was acting in a fiduciary capacity for other corporations and individuals, while in the cases at bar the corporations did not act in any such capacity. It will hardly be denied that the corporation acts in a fiduciary capacity towards its stockholders in precisely the same way it does to others whose interests it has in charge. Certainly courts of equity will just as carefully guard the rights of stockholders as of those occupying no such relation. See authorities cited in our original brief p. 11.

In the case of Thompson *vs.* Union Pacific Rail-

road Co., 76 U. S. (9 Wall.), 579, Mr. Chief Justice Chase sustained a suit in equity in the United States Courts by certain stockholders against the company and the treasurers of certain counties in Kansas, to enjoin the payment of an illegal State tax, although the facts alleged were admitted by the company and also as to the amount of the tax by the treasurers, and the case was submitted upon an agreed statement of facts. Even this was not considered as showing collusion for the purpose of giving the United States courts jurisdiction, or as evidence of bad faith; and although the record shows the Attorney General argued the case in this court, it does not appear the bill was served upon, or any appearance was made below, by the representatives of the United States.

In the case of Smyth *vs.* Ames, 169 U. S., 466, Mr. Justice Harlan delivering the opinion of the court, it was held that the United States courts had jurisdiction of a bill in equity by stockholders of a railroad company against the company and others to test the constitutionality of a statute of Nebraska regulating rates for transportation by the railroad company, notwithstanding the fact that it was urged that a section of the same statute authorized the railroad company to show, in a proper action brought in the Supreme Court of the State that the rates therein prescribed are unreasonable

and unjust, and hence that there was an adequate remedy at law.

In the case of Wilson *vs.* Lambert, 168 U. S., 611, Mr. Justice Shiras held:

> "That courts of equity undoubtedly have jurisdiction in cases where an attempt is made to enforce special assessments for public parks in the District of Columbia, which is unconstitutional, because the remedy at law could not be regarded as plain and adequate."

No Remedy at Law.

In these cases it is insisted complainants had an adequate remedy at law, which remedy is pointed out by the Government in the brief filed after the oral argument, as an action against the clerk of the court to whom the license taxes were paid under the provisions of section 4 of the Act of May 17, 1884, which is to the effect that the clerk of the court established by that act was made *ex officio* secretary and treasurer of said district, and that as such he was required to receive all moneys collected from fines, forfeitures, or in any other manner, except from violations of the customs laws, and apply the same to the incidental expenses of the said district court and the allowances thereof, as directed by the judge of court, and account for any balances quarterly under direction of the Secretary of the Treasury.

It is insisted that because of this provision of the Act of 1884, the clerk who received the license taxes under the special Act of 1899, making an entirely different provision as to their disposition, received them as the treasurer of Alaska, and that consequently our proper remedy was by an action at law against him to recover back the taxes so paid.

This position is untenable for two reasons:

1. There were no fines or forfeitures provided for by law at that time, except such as the court might adjudge under its general powers and under the general laws. None of the licenses provided for under the Act of 1899, or the penalties attached to a failure to comply, were in existence at that time, nor at any time prior to the act of 1899, hence could not have been contemplated by Congress in the Act of 1884.

2. The Act of 1899, being a complete code of laws and having provided a special method of granting licenses and collecting and accounting for the license fees in a different method, viz: by depositing them all in the Treasury of the United States and being complete in itself, it will control their disposition; and if in conflict with a statute enacted fifteen years before, when there was only one court and one clerk, and before the present duties

were required to be performed, it will be held to be a repeal by implication.

That the subsequent Act of June 6, 1900, amending the Act of 1899, provided that the several clerks should apply a part of the moneys received from licenses granted under its provisions in a manner other than by depositing them all in the United States Treasury, cannot affect these cases. Nor is it important that by said amended act (Sec. 463), it is provided that "all moneys received for licenses by him or them under this act shall, *except as otherwise provided by law*, be covered into the Treasury of the United States." The inference sought to be drawn from the exception italicised, that it refers to the expenditures provided for under the Act of 1884, by no means follows.

This same Act of June 6, 1900, provided that fifty per cent. of the license taxes paid by persons in incorporated towns should be paid to the treasurers of such corporations.

It is evident this was the "otherwise provided by law" referred to in the exception.

We insist that as the court was required to consider all applications and remonstrances, and grant the licenses upon a judicial determination of the questions involved, it was not a mere ministerial act as claimed by the Government, but a judicial function; and that as the clerk was required by the law

to cover all the money received into the Treasury of the United States, which became at once a part of the general fund, there was no one who could have been sued to recover back the money paid, and hence no remedy at law.

But it has been held that even when there is a remedy at law, courts of equity will sometimes entertain jurisdiction.

High, on injunctions, 2d ed., 537, says:

> "The great hardship and oppression of an illegal municipal ordinance imposing discriminating tax on trades, coupled with the severity of its penal provisions and the forfeiture of goods imposed for non-payment of the tax are regarded as affording sufficient grounds for relief in equity, notwithstanding a remedy at law. Citing Gould *vs.* Mayor of Atlanta, 55 Ga., 678."

In the Georgia case a foreign peddler or auctioneer was required to pay to the city 5 per cent of his sales, which was not done, and his goods were levied upon to pay fifty dollars on his first day's sales of one thousand dollars, and a threat that such proceeding would be continued from day to day, and the court held as set out above from the text of High on Injunctions.

The cases under consideration call much more loudly for equitable interference, as the fine for the first day business is carried on without a license

is a sum equal to the license tax; for a second offense, a sum equal to double the amount of the tax; for the third offense, three times the amount of the tax and imprisonment for not less than thirty days and not more than six months. The law also provides that each day's business is done or attempted to be done without a license, shall constitute a separate and distinct offense. For the amount of license taxes and fines which would have been imposed if law had been resisted. See original brief, p. 14, and subsequent one, p. 2.

And when the remedy at law is doubtful, as said by Mr. Justice Brown in Davis *vs.* Wakelee, 156 U. S., 80:

> "Where a court of equity can give relief the plaintiff ought not to be compelled to speculate upon his chance of obtaining relief at law."

It is respectfully submitted that this alleged remedy at law, as urged by the Government, is at least uncertain if not speculative.

In the case of the Pacific Coast Steamship Co., Nos. 29, 30, and 31, and the Pacific Steamship Whaling Co., No. 26, it is insisted no suits were instituted and no cases exist; no one was sued and no one was made a party; that in applying for a license there was no call made upon the court to act in a judicial capacity; that the law might have

provided that the license should be issued by the clerk or by any officer of the District in Alaska.

But the law *does not* so provide. On the contrary it provides for the filing of remonstrances and the trial of issues by the court. In the case at bar it was necessary for the court to determine whether these were American or foreign ships, their seaworthiness, their tonnage by a fixed rule, and such other facts as would satisfy it that the license should issue. In the case of the Pacific Steamship Whaling Co., No. 26, the same facts as to their several vesssels and also the number of cases of salmon canned by it, and in the Corbus case the number of stamps used by that company. All of these facts the court was required to determine, judicially, even when no protest was filed.

The Supreme Court of Indiana, in the case of Castle *vs.* Bell, 145 Ind., 8, at p. 11, a case arising under the liquor law of that State, of 1875, under which applicants for license were required to file their application before the Board of Commissioners of the county where the liquor was to be sold, held:

> "In fact it may be said that a proceeding instituted to obtain a license to retail liquor under the Act of 1875, is in its nature a civil action within the meaning of section 973, R. S., 1894 (Sec. 961, R. S., 1881), which provides that a civil action may be prosecuted or defended by a party in person or by attorney".

This case was followed upon this point, in the subsequent case of Wilson *et al. ex.* Mathas, 145 Ind., 493, at p. 494, as follows:

> "It has been held by this court that a proceeding, under the statute of 1875, to obtain a license to sell intoxicating liquors is a judicial proceeding." Citing the Castle Bell case.

The 94th Equity Rule has not been Invoked, and is not applicable.

1. It evidently applies only where it was the duty of the corporation to bring the suit against some one else. But here we have the anomalous situation of their being no one against whom the corporation could have brought suit.

a. It could not have sued itself.

b. It could not have sued the United States.

c. Neither could it have sued the court who granted the license as a judicial function.

2. Again the rule was adopted for the double purpose of preventing parties from getting into the United States courts by collusion; and of preventing the annoyance to the business of corporations by minority stockholders undertaking to do what the majority should have done, in their opinion.

3. Here the United States court was the only judicial tribunal in existence in Alaska, and hence the most important part of the rule can have no application.

4. And, as the corporation could not sue for lack of a defendant, as we have seen, the other branch of the rule does not apply.

The Government's Position.

We invite the attention of the court to the changes made by counsel for the Government in their position since filing their original brief.

In that brief, referring to the procedure, it was said at the bottom of page 12:

> "The Government in this connection rests its argument upon Judge Johnson's opinion."

Counsel also, while severely condemning the mode of procedure in the Corbus and Stewart cases, which were bills in equity by stockholders against the corporation, as encouraging collusive actions, referring to the method pursued in cases Nos. 139, 155, 156, and 157, October term, 1901, now Nos. 26, 29, 30, and 31, October term, 1902, which were in the nature of applications tendering the license fees, but protesting against the law as being unconstitutional, at page 12 said:

> "There were unquestionably practical difficulties which confronted plaintiffs in these cases in contesting the constitutionality of the legislation in question."

In the oral argument, as well as in the brief filed subsequent thereto, counsel not only makes his principal argument against *the procedure* in the cases, but especially objects to the method of procedure in Nos. 26, 29, 31, and 32, wherein recognizing the great practical difficulties counsel originally rested the case on this point on the opinion of the court below.

In the original brief it was also said, and the position was emphasized by italics, that—

> "*Alaska has no distinct treasury and no officer known as treasurer*" (p. 30).

This is followed by the statement that—

> "As the Congress sitting at Washington is the legislature, so the Treasury Department located at Washington is the treasury of Alaska, and Congress presumably knew this when it passed the Act of 1899."

Again at page 32:

> "There being no local treasury in Alaska, Congress could have done no more," &c.

And on page 31:

> "In the first place, there was no separate treasury in Alaska into which the license fee could be paid."

Again on page 33 it is said:

> "If the court will favor any reasonable construction that will sustain the constitutionality of the legislation, then I submit it should favor a construction of the act of Congres now under consideration which interprets its true meaning to be that the license fees imposed by said act are levied and collected for the benefit of the people of Alaska, and to be expended therein. *If Alaska had a local treasury* this construction would be an *unreasonable one, and could not be tolerated even to sustain the constitutionality of the legislation:* but I submit that where there is *no local treasury*, the mere fact that local taxes are paid into the general Treasury of the United States *(that being the only treasury of Alaska)* does not rebut the fair presumption under our constitutional system that local taxes are intended for local purposes only," &c. (The italics are ours.)

While on the other hand, counsel in his oral argument dwelt largely upon the provision in the Act of 1884, making the clerk of the district court the treasurer of Alaska, and upon this theory

maintained that the complainants had an adequate remedy at law by proceeding against such clerk, thus utterly repudiating the position taken in the original brief.

This complete change of attitude, evidently an afterthought, would at least indicate not only a difference, but great doubt on the part of these exceptionably able gentlemen who are managing the interests of the Government; and even viewing the subject from their standpoint, would seem to call for the application to these cases of the doctrine enunciated by Mr. Justice Brown in the case of Davis *vs.* Wakelee, *supra*, that in a case where equity can give relief "the plaintiff should not be compelled to speculate upon his chances of obtaining relief at law."

Again we find the same difference between the positions taken by counsel for the Government in their original brief and in the brief filed subsequent to the oral argument, in discussing the question whether these license taxes could be considered as internal revenue taxes and levied within the purview of section 3226, R. S.

In the original brief, it is said (p. 32):

> "Had Congress regarded these taxes as general excise taxes it would presumably have left the collection of the inland excises to the internal revenue department which collects other

internal revenue duties, and the shipping duties to the collector of customs. On the contrary, the act expressly provides that the clerk of the court shall receive the money and pay the same into the general treasury. *It is therefore obvious that these license fees were not regarded as internal revenue duties* or as part of the general revenues of the Government." (The italics are ours.)

While in the subsequent brief filed, at p. 63, it is said:

> "The section (3226, R. S.) applies to any internal tax alleged to be erroneously or illegally assessed or collected. The taxes in question, though provided for Alaska only, must certainly be considered 'internal' taxes in view of the fact that they are levied by the United States and the proceeds therefrom go into the general Treasury. They undoubtedly raise internal revenue."

The Unconstitutionality of the Act of March 3, 1899.

It is not contended that the act providing for these license taxes is in harmony with the uniformity clause of the Constitution, hence we may take this point as conceded, unless one of the following positions assumed by the Government is well taken, viz:

1. That they are not taxes for revenue, but police regulations which are authorized by Art. 4, Sec. 3, of the Constitution.

2. That they are local taxes levied by Congress as the legislature of Alaska, and likewise authorized by Art. 4, Sec. 3, and—

3. That they are conditions upon which the applicants, as foreign corporations were permitted to do business in Alaska, and hence authorized by the same article and section.

If neither of these positions is tenable, then it is, in effect, admitted the act is unconstitutional.

Not Police Regulations.

They are not police regulations, because they apply to occupations and classes of business which do not fall within the domain of police power.

Teideman on State and Federal Control of Persons and Property, p. 493.

St. Paul *vs.* Traeger, 25 Minn., 248.

And authorities cited in reply brief, p. 2.

The fee or tax is in excess of cost of issuing license, and hence is for revenue.

Laundry License Cases 22, Fed. Rep., 701.

Cooley on Taxation says (p. 592):

> "When the grant (license) is not made for revenue, but for regulation, a much narrower construction is to be applied. A fee for the license may still be exacted, but it must be such a fee only as will legitimately assist in the regulation; and it should not exceed the necessary or probable expenses of issuing the license and of inspecting and regulating the business which it covers."

Under this statute it may be conceded that the amount of the fee is a matter within the discretion of Congress, but the question whether it is a fee for regulation merely, as contended by counsel, or a tax for revenue purposes must depend upon the amount the applicants pay and the cost of issuing the licenses in addition to the fee or tax. No regulation is provided and none is necessary.

Counsel have not attempted to show that the tax of $1 per ton on our vessels, which is three and one-third times as much as foreign vessels are charged, and six and two-third times as much as those of the more favored nations pay for the privilege of doing business in American ports, is necessary to pay for the license, which is paid otherwise, or of inspection and regulation which is not provided for (Sec. 4219, R. S.). See also authorities cited in reply brief, p. 2.

But this question is set at rest, so far as the intention of Congress is concerned, by the discussion

upon the sections involved. See extracts from the *Congressional Record* (Appendix).

The Taxes are Tonnage Taxes—Duties.

That the doctrine that license fees involved in the cases of Stewart *vs.* The Washington and Alaska Steamship Co., No. 26, and The Pacific Coast Steamship Company, Nos. 29, 30, and 31, where nothing is required to be done, are "tonnage taxes," and that their exaction of such fees of vessels, enrolled, licensed, and taxed at other ports in the United States, is "the payment of duties" by vessels bound from one State to another, within the meaning of the Constitution, was settled by this court in the cases of—

Inman Steamship Co. *vs.* Tinker (4 Otto, 94 U. S., 238, and

Moran *vs.* New Orleans, 112 U., S. 69.

That as such, if it be held that they are embraced within the terms of the act, it is violative of section 9, article 1, of the Constitution, and is therefore void.

Not Local Taxes.

It is difficult to conceive how it can be contended that taxes which are covered into the general Treasury of the United States, where they become a part

of the general fund, and can be paid out *only* upon subsequent acts of Congress, and may be paid out for any and all general purposes, are *local taxes paid for the benefit of Alaska.*

The admitted facts are sufficient to refute that contention. That these licenses were thus payable is made certain by the law, and that the law was complied with, so far as the cases at bar are concerned, is shown by the letter of the Assistant Secretary of the Treasury printed as "Exhibit A" in Mr. Beck's brief (pp. 37, 38, and 39.). The Act of June 6, 1900, is not retroactive and can have no effect upon these cases.

Not Conditions under which Foreign Corporations may do Business in Alaska.

If it had been the purpose of Congress to require such license taxes from foreign corporations only, it certainly would have given some intimation of such purpose in the act. But, on the contrary, it applies to individuals as well as corporations; to residents and citizens as well as to foreigners. With all due deference, we must say this contention seems to us to be purely imaginary, and were it advanced by less able and conscientious counsel we would be tempted to say it but betrays the weakness of their cause.

Receipts and Expenses of Alaska.

It is attempted to be shown that the taxes provided for under the act in controversy are reasonable, and that they are the only taxes paid by the people of Alaska. Of course, this argument can have no weight in the determination of the question whether the act violates the Constitution of the United States, even were the truth of the assertion admitted.

But, in point of fact, the people pay customs and internal revenue duties just the same as do those in other communities. That they did not pay the expenses of the local government given them by the United States is a matter of small importance, for if we may believe the reports of the Governors of the Territory, they had none worthy of the name, except that which they organized and paid for within themselves. No people owing allegiance to th United States and entitled to their protection were ever, in our whole history, as sadly neglected by the Government as have been these very people of Alaska, the pioneers in that far north country who have been compelled to make a very unequal struggle against almost insurmountable difficulties.

The tables submitted in the Appendix to counsel's brief are very misleading, in our opinion. For instance, Alaska is charged in 1900 with—

Repairs and expenses of steamer Thetis...	$70,000
Expenses of revenue vessels in Alaskan waters	132,000
Customs service	52,367

In 1901 with—

Expenses of revenue vessels in Alaskan waters	$188,500
Customs service	58,245
Light-house service	100,000

And in 1902 with—

Light-house service	$200,000
Expenses of revenue vessels in Alaskan waters	120,000
Customs service	66,000

And in 1903 with—

Light-house service	$126,013
Expenses of revenue vessels in Alaskan waters	150,000
Customs service	65,000

Then there are charged for each year, such as expenses for reindeer, all owned by the Government, salaries of agents at seal fisheries, &c.

None of them are legitimate *local charges*. Are the expenses of revenue vessels, including their repairs, the customs service or light-house expenses considered legitimate local charges against Massachusetts, New York, or Virginia, because they were

on duty in or near their States? It would seem the Treasury Department is hardly fair in making such charges.

But, as before remarked, it is totally immaterial whether the expenses exceed the income from Alaska, so far as the question before the court is concerned, and is brought in only for the purpose of showing that even though the law may be unconstitutional, in equity, they should pay the taxes.

We are entirely convinced that the people of Alaska have paid the United States for much more than they ever received, and that no other part of our people have received as bad treatment at the hands of the Government as they have.

We are unable to see that the case of Ashley *vs.* Ryan (153 U. S., 436), referred to by counsel, has any bearing whatever upon this case. The Secretary of State of Ohio in that case was a ministerial officer, performing a conceded ministerial duty; and, besides, the question of procedure was not considered or passed upon by this court. The Federal question *only* was considered.

Respectfully submitted.

S. M. Stockslager,
Geo. C. Heard,
Attorneys for Appellants.

APPENDIX.

At page 395, vol. 32, part 1, of the *Congressional Record* (3d Session, 55th Congress), what are now sections 460 and 461 of "An act to define and punish crime in the District of Alaska and to provide a code of criminal procedure for said District, approved March 3, 1899" (30 Stats., 1336), together with others, was offered by Mr. Tongue of Oregon.

At page 581, of the same volume, this amendment was reached for consideration and the following colloquay occurred:

The Speaker. Does the gentleman from Oregon regard this as an admissible amendment?

Mr. Tongue. Well, I submit it for the consideration of the House. There may be some question as to a part of it. I think there is no question as to the main part of the provision, however, the part which has not yet been read.

Mr. Grosvenor. Mr. Speaker, the point of order was reserved.

The Speaker. The point of order had been reserved, and the question is whether the amendment is admissable.

Mr. Loyd. I make the point of order that it is not germane to the bill.

Mr. Grosvenor. There is a better and an unanswerable point of order, that this is a measure to raise revenue, and has not come from the Committee on Ways and Means, and has not been referred to that committee. I do not see how you can raise revenue through the instrumentality of a code of criminal procedure for the District of Alaska.

Mr. Payne. This would amend the internal revenue laws so far as the District of Alaska is concerned.

The Speaker. It would amend the internal revenue laws, and would create a crime for the sake of punishing it.

Mr. Tongue. If I may be permitted, I will say that, so far as the main portion of this bill is concerned, it is now a crime in Alaska to import or sell liquor, and almost a crime to drink it there. This amendment proposes to modify the provision in reference to liquor. It seems to me that that portion of it, at least, is germane.

The Speaker. It proposes also to establish a scheme of taxation. This is a proposition to codify the criminal code of Alaska. It would look as if those two things were incompatible.

Mr. Tongue. Is the provision of this amendment

modifying the liquor laws of Alaska incompatible with this bill? This bill deals with that subject.

The Speaker. The difficulty is, supposing you admit that it is not incompatible with that, there are, nevertheless, a great many other things in the amendment which are entirely incompatible with that and everything else.

Mr. Tongue. Those can be separated. That objection applies only to the first section of the amendment, while the remaining portion deals exclusively with the liquor question, and modifies the present liquor laws as contained in this bill.

The Speaker. The amendment is offered as a whole. If any of it is obnoxious to the objection, it would all have to be ruled out.

Mr. Tongue. If the Chair thinks the first two sections inadmissible, then I ask to strike them out and move the remainder as an amendment.

Mr. Moody. I reserve the point of order against that, Mr. Speaker.

Mr. Dockery. What is the remainder?

Mr. Tongue. The remainder deals wholly with the liquor question.

At page 2235, vol. 32, part 3, same session, when the bill was being considered in the Senate, the provision with reference to license was offered as

a substitute for sections 461 and 462, when Senator Chandler made the folowing observations and inquiries:

> "The sections which are now being read appear to be all new additions to the bill proposed by the Senate Committee on Territories. There appears to be a very elaborate system of taxation by license fees, and then there follow statutes regulating the sale of liquor in the Territory. They seem to have been carefully prepared, but they will, of course, arouse some discussion before the bill is disposed of in the Senate. I only wish now to have from the chairman of the committee, whom I see present, or the Senator from Idaho (Mr. Shoup), tell me, if he can and is willing to do so, from the statutes of what other States these sections have been derived, if they have been taken from similar statutes in other States. What is the origin of those provisions? Are they original with the committee or are they taken from previous statutes in existence elsewhere?"

To his inquiries, Senator Shoup answered as follows:

> "I wish to state to the Senator from New Hampshire that by previous agreement there is to be no action upon these amendments tonight. The license law is practically the same as that of the District of Columbia. I will state not for the purpose of discussion, but

merely for the information of the Senator from New Hampshire, that the license law is taken from that of the District. The Committee on Territories have thoroughly investigated the condition of affairs in Alaska and have prepared certain licenses which in their judgment will create a revenue sufficient to defray all the expenses of the government of the Territory of Alaska."

To which Senator Chandler replied as follows:

"Do I understand the Senator to say that the body of the license taxes provided for and the liquor licenses are taken from the statutes prevailing in the District of Columbia?"

To which Senator Shoup again made answer as follows: "That is correct."

"The details are somewhat different, but they are based so far as the liquor law is concerned, on the District law. The other licenses are not. They are licenses peculiar to the condition of affairs in the Territory of Alaska on certain lines of goods, articles of commerce, etc., which in the judgment of the committee, should bear a license, inasmuch as there is no taxation whatever in Alaska. Not one dollar of taxes is raised on any kind of property there. It is therefore necessary to raise revenue of some kind, and in the judgment of the Committee on Territories, after

consultation with prominent citizens of the Territory of Alaska, including the Governor and several other officers, this code or list of licenses was prepared by the committee. It was prepared largely upon their suggestions and upon the information of the committee derived from conversing with them."

To which Mr. Chandler again responded as follows:

"Then I understand that the commercial and business conditions in Alaska being peculiar, a special code of license taxes has been devised."

To which Mr. Shoup replied: "That is correct".